

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 15,614
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals the decision by the Office of Child Support (OCS) refusing to refund to him his federal income tax refund for 1997 of \$508. The issues are whether OCS properly intercepted the petitioner's tax refund and, if so, whether OCS is obligated by law to refund to the petitioner any portion of the tax refund in excess of the amount of arrearages owed by the petitioner for child support. At the hearing in this matter, held on September 9, 1998, the parties agreed on the following facts.

FINDINGS OF FACT

1. Pursuant to a 1994 court order, the petitioner is obligated to pay child support in the amount of \$721 a month. OCS is the agency responsible for the collection of this support.

2. The petitioner's employer withholds the sum of \$332.76 from the petitioner's biweekly paychecks and forwards this amount (also biweekly) to OCS. Over the course of a year the amount withheld biweekly (\$332.76 x 26) equals the amount of the petitioner's yearly support obligation (\$721 x 12).

3. OCS uses a monthly accounting system to credit

child support payments. In any given month, because the petitioner's employer sends his child support to OCS on a biweekly basis, the amount of support credited by OCS to the petitioner's account may be under (e.g., when two biweekly payments are received) or over (e.g., when three are received) the petitioner's \$721 monthly obligation.

4. The parties now agree that on December 31, 1997, the balance of payments credited to the petitioner's account by OCS shows an arrearage of \$272.67. However, due to an accounting error, at that time OCS believed that the petitioner owed \$564.07.

5. OCS referred this debt to IRS for collection by tax refund offset.

6. In April, 1998, IRS sent OCS the petitioner's 1997 tax refund in the amount of \$508.

7. So far in 1998, the petitioner's employer has sent all child support withheld from the petitioner's wages to OCS in a timely manner, and it is projected that for the foreseeable future these payments will keep the petitioner current in his monthly support obligation.

8. OCS having credited the petitioner's entire 1997 tax refund, it can now be projected that the petitioner will carry forward indefinitely an average surplus of \$235.33 in his account with OCS--i.e., the difference between the tax refund (\$508) and the petitioner's arrearage on December 31, 1997 (\$272.67).

ORDER

The decision by OCS is modified. OCS shall refund to the petitioner the amount of his tax refund (\$235.33) remaining after the arrearage as of December 31, 1997, that has been satisfied.

REASONS

The petitioner maintains that OCS should refund to him his entire 1997 tax refund (\$508) because he claims that his employer had sent another withholding to OCS before December 31, 1997, which, had it been received by OCS in 1997, would have given him a surplus in payments as of that date. The petitioner argues that before certifying a debt to IRS, OCS should be required to check on and credit such child support payments "in transit".

OCS maintains that its notifications to IRS are made monthly, so that even if the payment in transit on December 31, 1997, was credited at that time, the petitioner's account would have shown that much more of a debt for January, 1998. Albeit with the benefit of hindsight, it can now be determined that if OCS had not intercepted the petitioner's tax return, the petitioner would have carried forward an average arrearage of \$272.67 per month for the foreseeable future. Thus, in the long run, it makes no difference if OCS credits any one month's payments that are

"in transit". The fact remains that the petitioner was, in fact, in arrears for \$272; and were it not for the intercept of his tax refund, he would have remained so for the foreseeable future.

Thus, the issue in this case becomes how much of the petitioner's tax refund OCS is entitled to keep. In support of its decision to keep the entire amount OCS cites the following policy:

For purposes of collecting and monitoring child support, the Office of Child Support uses a monthly accounting system. In order to do this, all orders are converted to a monthly amount in the computer system. This is done by multiplying weekly orders by 4.333 (the average number of weeks in a month) to arrive at the monthly amount. Of course, there are a variety of payment cycles -- some employers pay weekly, some bi-weekly, some semi-monthly. This creates a differing balance at the end of each month on the support cases. If 4 weekly payments are received in a month, there would be a debit on the case at the end of the month. If 5 weekly payments are received, there would be a credit at the end of the month. Because of this fluctuation in payments and monitoring, child support cases are often showing a credit balance. The Cash Receipts Unit receives a daily list of credit balances and reviews cases to see if there is truly an overpayment or if it is a product of the monthly rounding. In cases where the "credit" is greater than the recurring payment that we are receiving from the employer an arrears affidavit is prepared and if the "credit" is greater than the recurring payment a refund is sent to the non-custodial parent and the money recouped from the custodial parent. If the "credit" is less than the recurring payment, no refund is done.

It appears, however, that the above policy applies only to situations in which an overpayment of support is caused by there being 5 payment weeks of wages in a calendar month (or, by extension, 3 biweekly payments in a calendar month).

This is not the case herein. The petitioner's overpayment

was caused by OCS keeping more of his tax refund than it needed to in order to satisfy the petitioner's arrearage. Therefore, not only does the above policy not apply, but Federal and state statutory provisions require OCS to return this overpayment to the petitioner.

As noted above, OCS has now acknowledged that the amount of the arrearage it reported to IRS was in error. Instead of the amount of \$564.07 that it reported to IRS (which was more than the petitioner's total refund of \$508), the petitioner's actual arrearage was only \$272.67. Under 42 U.S.C. § 664(a), IRS is only authorized to withhold from federal tax refunds "an amount equal to past due support". Moreover, the statute provides:

In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

Another statutory provision may also apply. It is not known in this case whether the custodial parent for whom OCS is collecting support is a recipient of ANFC. If she is not, there is a further problem for OCS in that the federal statutes require there to be an arrearage of at least \$500 in such cases before withholding from federal tax refunds can be initiated. See 42 U.S.C. § 664(b)(2)(A). Because

there is no indication that OCS acted in bad faith in reporting the petitioner's arrearage to be \$564.07, and in light of the undisputed fact that the petitioner did have an arrearage that would not otherwise have been paid through wage withholding, it cannot be concluded that the above provision requires OCS to now refund the petitioner's intercepted tax refund in its entirety. However, now that it has admitted its error, it appears unseemly, in light of the above statute, that OCS would now refuse to at least refund to the petitioner the amount collected that was in excess of the arrearage he owed.

For all the above reasons, OCS shall refund to the petitioner the amount of \$235.33.

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